IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 15.03.2010

CORAM:

THE HONOURABLE MR. JUSTICE T. RAJA

WP.No.27668 of 2004 and
WPMP.Nos.30083 and 30084 of 2005.

Selvi. Usharani .. Petitioner
Vs.

1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai 3.

2.The Head Mistress,
Corporation Middle School,
Sami Street,
Chennai-3. .. Respondents

Prayer : Writ Petition is filed under article 226 of the Constitution of India praying to issue an Writ of Certiorarified to call for the records on the file of the respondents relating to the impugned order of the first respondent bearing No.Ka.Thu.Na.Ka.No.M.2/74/2000 dated 25.07.2005 and quash the same in so far as in imposing the punishment of penalty of Rs.5,000/- as token recovery and treating the period of petitioner non-employment as leave without wages.

For Petitioner : M/s.R.Arumugam.

For Respondents : M/s.V.Bharathidasan

ORDER
The present writ petition has been filed by Selvi.Usharani challenging the order passed by the first respondent bearing No.Ka.Thu.Na.Ka.No.M.2/74/2000 dated 25.07.2005 and quash the same in so far as imposing the punishment of penalty of Rs.5,000/- as token recovery and treating the period of non-employment of the petitioner as leave without wages.

2. Selvi.Usharani was appointed as Nutritious Noon Meal organiser in the Corporation Middle School, Perambur Barracks, Chennai-12 from 24.01.1983. Subsequently, after three years, in the year 1986 the petitioner was posted in another Corporation Middle School at Vedavinayakar Koil Street, Perumalpettai, Purasawalkam, Chennai-7. On 16.04.1989, the Tamil Nadu Government has issued G.O.Ms.No.370, Backward Classes Welfare Nutritious Meal Programme and Social Welfare Department, directing to regularise all the Nutritious meal organisers as permanent part time employees. Thus the petitioner became a part time employee from the year 1989 onwards. Whileso, on 22.12.1999, when the supervisor came to supervise the noon meal center in which the petitioner was working as Nutritious meal organisers, during the checkup undertaken by the supervisor, some irregularities were found. Therefore, an enquiry was ordered and finally after giving reasonable opportunity to the petitioner, the enquiry officer also submitted a report holding that the charges

levelled against the petitioner, were found established. But, the disciplinary authority, by an order dated 25.07.2005, based on the findings of the enquiry officer has come to the conclusion that the charge levelled against the petitioner were found proved and on that basis the petitioner was directed to pay a sum of Rs.5,000/- as token penalty and after making the payment of above said sum of Rs.,5,000/-, the disciplinary authority directed the petitioner to report duty at Corporation Middle School, Periamet, Chennai. Since the order dated 25.07.2005 imposing punishment of Rs.5,000/- is without any prior notice or holding any enquiry and is also in total deviation to the report of the enquiry officer, the petitioner was constrained to file the present writ petition.

3.The present writ petition is filed against the impugned order directing the petitioner to pay the token penalty of Rs.5,000/- as the impugned order is totally against the findings of the enquiry officer, because the enquiry officer has found the petitioner not guilty of any charge levelled against the petitioner.
4. The counsel appearing for the petitioner submits that though the enquiry officer, after conducting detailed enquiry, submitted findings holding that the petitioner was found not guilty, but the Disciplinary authority without application of mind, has held that the enquiry officer found the petitioner guilty, which is not correct and it was urged that further the order of imposing Rs.5,000/- as token penalty is against the principles of natural justice because no notice or reasonable opportunity was given to the petitioner to put forth her explanation and on that basis prayed for dismissal of the impugned order.

5. While refuting the contention advanced by the learned counsel appearing for the petitioner Mr.V.Bharathidasan, learned counsel for the respondents submits that the disciplinary authority has got every right to deviate from the findings of the Enquiry Officer as it is a well settled legal position, but the disciplinary authority passed the order dated 25.07.2005, without any notice to the petitioner. Therefore, the learned counsel appearing for the respondent prays for permission to proceed against the petitioner in accordance with law.
6. It is an admitted fact that the Enquiry Officer submitted the report finding the petitioner not guilty. No doubt it is always open to the respondents to proceed in accordance with law deviating from the findings of the enquiry proceedings, only subject to compliance of principle of natural justice by giving a notice to the petitioner as to why the respondents should not proceed against the petitioner by deviating from the findings of the enquiry officer.

7. It is trite law that the disciplinary authority is entitled to take a contrary stand by differing with the findings of the enquiry officer by providing a notice to show cause against the tentative decision of the disciplinary authority to differ with the findings of the enquiry officer. This legal position has been settled by the Supreme Court in Lav Nigam Vs. Chairman & MD, ITI Ltd., (2006 (9) SCC 440), wherein the Hon□ble Apex Court has categorically held that in case the disciplinary authority differs with the view taken by the enquiry officer, he is bound to give a notice setting out his tentative conclusion to the delinquent employee. It is only after hearing the delinquent employee, the disciplinary authority is entitled to arrive at a final finding of guilt. Still thereafter, the delinquent employee is again required to be served with another notice relating to the punishment proposed. Useful reference can also be had from para 11 and 12 of the abovesaid judgment, which are extracted hereunder :-
11. In Punjab National Bank v. Kunj Behari Misra1 a Bench of this Court considered Regulation 7(2) of the Punjab National Bank Officer Employees□ (Discipline and Appeal) Regulations, 1977. The Regulation itself did not provide for the giving of any notice before the disciplinary authority differed with the view of the enquiry officer. This Court held: (SCC p. 97, para 19)
□The result of the aforesaid discussion would be that the principles of natural justice have to be read into Regulation 7(2). As a result thereof, whenever the disciplinary authority disagrees with the enquiry authority on any article of charge, then before it records its own findings on such charge, it

must record its tentative reasons for such disagreement and give to the delinquent officer an opportunity to represent before it records its findings. The report of the enquiry officer containing its findings will have to be conveyed and the delinquent officer will have an opportunity to persuade the disciplinary authority to accept the favourable conclusion of the enquiry officer. The principles of natural justice, as we have already observed, require the authority which has to take a final decision and can impose a penalty, to give an opportunity to the officer charged of misconduct to file a representation before the disciplinary authority records its findings on the charges framed against the officer.

12. This view has been reiterated in Yoginath D. Bagde v. State of Maharashtra. In this case also Rule 9(2) of the Maharashtra Civil Services (Discipline and Appeal) Rules, 1979 did not specifically provide for a disciplinary authority to give an opportunity of hearing to the delinquent officer before differing with the view of the enquiry officer. The Court said: (SCC p. 758, para 29)

But the requirement of hearing in consonance with the principles of natural justice even at that stage has to be read into Rule 9(2) and it has to be held that before the disciplinary authority finally disagrees with the findings of the enquiring authority, it would give an opportunity of hearing to the delinquent officer so that he may have the opportunity to indicate that the findings recorded by the enquiring authority do not suffer from any error and that there was no occasion to take a different view. The disciplinary authority, at the same time, has to communicate to the delinquent officer the TENTATIVE reasons for disagreeing with the findings of the enquiring authority so that the delinquent officer may further indicate that the reasons on the basis of which the disciplinary authority proposes to disagree with the findings recorded by the enquiring authority are not germane and the finding of not guilty already recorded by the enquiring authority was not liable to be interfered with.

8. Prima facie, the enquiry report submitted by the enquiry officer does not disclose the guilt of the petitioner. Whileso, the disciplinary authority, though has got power to deviate from the enquiry report, but without giving further notice calling upon the petitioner to show cause as to why the disciplinary authority should not deviate from the enquiry officer's report, cannot impose the punishment of payment of Rs.5,000/-. Therefore, I am of the considered view that the petitioner is entitled to join duty. Accordingly, this Court, while setting aside the impugned order passed by the 1st respondent, directs the respondents to permit the petitioner to join duty within one week from the date of receipt of a copy of this order. However, it is always open to the 1st respondent to proceed in accordance with law by giving fresh notice from the stage of the submission of the report by the enquiry officer by calling upon the petitioner to show cause as to why the disciplinary should not take a deviation from the enquiry officer's report and further proceed in accordance with law.

9. For the reasons above mentioned, this writ petition is allowed. Consequently, connected MPs are closed. No costs.

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To
1.The Commissioner,
Corporation of Chennai,
Rippon Buildings, Chennai-3.

2.The Head Mistress,
Corporation Middle School,
Sami Street,
Chennai 3